



# भारत का राजपत्र The Gazette of India

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सं. 18] नई दिल्ली, सितम्बर 16—सितम्बर 22, 2012, शनिवार/भाद्र 25—भाद्र 31, 1934  
No. 18] NEW DELHI, SEPTEMBER 16—SEPTEMBER 22, 2012, SATURDAY/BHADRA 25—BHADRA 31, 1934

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके  
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (iii)  
PART II—Section 3—Sub-section (iii)

केन्द्रीय अधिकारियों (संघ राज्य क्षेत्र प्रशासनों को छोड़कर) द्वारा जारी किए गए आदेश और अधिसूचनाएं  
Orders and Notifications Issued by Central Authorities (other than the Administrations of Union Territories)

भारत निर्वाचन आयोग

नई दिल्ली, 7 सितम्बर, 2012

आ.अ. 33.—लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 के अनुसरण में, भारत निर्वाचन आयोग, 16-नांदेड, लोक सभा क्षेत्र से संबंधित, 2009 की निर्वाचन याचिका संख्या 1 में मुम्बई उच्च न्यायालय के औरंगाबाद बेंच के दिनांक 25 अप्रैल, 2011 का निर्णय/आदेश एतद्वारा प्रकाशित करता है (श्री सांभाजी सुपुत्र श्री लक्ष्मणराव पवार-याचिकाकर्ता बनाम श्री भास्करराव सुपुत्र श्री बापुराव खटगावकर पाटिल—प्रत्यर्थी)।

(निर्णय/आदेश अंग्रेजी भाग में छपा है)

[सं. 82/महा.-लो.स./1/2009 (औरंगाबाद)]

आदेश से,  
बर्नाड जॉन, सचिव

ELECTION COMMISSION OF INDIA

New Delhi, the 7th September, 2012

O.N. 33.—In pursuance of Section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission of India hereby publishes the judgment/order dated 25-04-2011 of the High Court of Judicature of Bombay, Bench at Aurangabad in Election Petition No. 1 of 2009, relating to 16-Nanded Parliamentary Constituency (Shri Sambhaji S/o Laxmanrao Pawar—Petitioner V/s Shri Bhaskarrao S/o Bapurao Khatgaonkar Patil—Respondent).

**In the High Court of Judicature of Bombay****Bench at Aurangabad****Election Petition No. 01 of 2009**

Sambhaji S/o Laxmanrao Pawar,  
age : 58 years, Occ : Business,  
R/o House No. 1-3-83, Phule Nagar,  
Nanded, District Nanded

... Petitioner

Versus

1 Bhaskarrao S/o Bapurao Khatgaonkar  
Patil, age : major, Occ : Agriculture,  
R/o Rajendra Nagar Housing Society,  
Nanded, District Nanded

... Respondent

2. The Returning Officer,  
16, Nanded Parliamentary  
Constituency and District  
Collector, Nanded, having his  
office at Collectorate, Nanded

Names of  
Respondents  
No. 2 & 3 stand  
struck off vide  
Court's order  
dated 28-09-2010

3. The Election Commission of India,  
Nirvachan Sadan, Ashoka Road,  
New Delhi-110 001,  
through its Secretary.

Mr. P.R. Katneshwarkar, Advocate holding for  
Mr. A. B. Girase, Advocate for the petitioner.

Mr. P. M. Shah, Senior Counsel I/by Mr. A. B.  
Dhongade, Advocate for respondent no. 1.

Names of Repondents No. 2 and 3 stand struck off  
vide Court's order dated 28-09-2010.

Coram : R. M. Borde, J.

Reserved on : 25th March, 2011

Pronounced on : 25th April, 2011.

**JUDGMENT:**

1. The petitioner has presented instant petition challenging the election of Respondent No. 1 returned candidate to 16-Nanded Parliamentary Constituency. The results of the election were declared on 16th May. 2009 and Respondent No. 1, who belongs to Indian National Congress Party is declared as returned candidate.

2. Respondent No.1 has presented his written statement and controverted the contentions raised by the petitioner in the election petition. In the written statement presented by Respondent No. 1, a preliminary objection is raised to the maintainability of the petition. Respondent No. 1 has also requested for summary dismissal of the petition on the ground that it does not satisfy the requirement under Section 81(3) as well as Section 83 of the Representation of the People Act, 1951 (hereinafter referred to as 'the Act of 1951'). Respondent No. 1 has raised an objection that the petition does not disclose

accrual of cause of action and as such same is required to be dismissed at the threshold. A request was made by Respondent No. 1 to take up the election petition for consideration of the preliminary objections.

3. Considering the request made by Respondent No. 1, by an order dated 21-01-2011, it was directed to place the petition for consideration of preliminary objections set out in the Written 'statement' and for consideration of prayer in paragraph 37(a) of the written statement for dismissal of the petition at the threshold. The parties were required to address on the preliminary objection. Accordingly arguments were heard on 23-03-2011 and 25-3-2011.

— **Challenge of The Petitioner in Respect of Mode of Voting through Appartus of Electronic Voting Machines (EVMs).**

4. The petitioner, in his petition, making reference to several reports, complaints, allegedly received by the petitioner, has expressed doubt as regards possibility of tampering with the EVMs. In paragraph 9 of the petition, it is contended by the petitioner, on the basis of information gathered by him, that there is every possibility that those machines can be rigged and/or manipulated and/or tampered with. In paragraph 10 of the petition, referring to the views expressed by the experts in the field, one Dr. Satinath Chaudhary, it is stated that by using Microsoft Windows 98 on a Compaq PC, an EVM could be simulated and programmed to add votes to a certain candidate, no matter who has been voted. Dr. Chaudhary is a non resident Indian : (NRI) Computer Science Teacher in United States of America and it is stated that he had presented a public interest Civil Writ Petition in the Supreme Court and pointed out the risks in employing EVMs at the elections. In the said paragraph, views expressed by one Shri Ravi Visvesvaraya Prasad, who is a technologist in Electronics, which are of similar nature, are referred to. It is stated in the petition that even in the developed countries like United States of America, there is a move against use of EVMs without safeguards. In rest of the paragraphs of the petition, apprehension expressed by the petitioner in respect of reliability of the electronic voting machines, has been reiterated.

5. So far as actual functioning of the EVMs at the election to the 16-Nanded Parliamentary Constituency is concerned, petitioner refers to an incidence at Booth No. 90—182-Chainpur, based on the complaint of one Shri Hanumant Bhumanna Hangave. It is alleged that it was observed at the time of casting of votes, though the voters press the button before their preferential candidate, there occurred flashing of lights at two places. Thus an inference is drawn that though the voter intended to caste vote in favour of preferred candidate, it was recorded in the name of Respondent No.1. Similar allegation is made in respect of casting of votes at Polling Station No. 265-Hartala.

6. The mode of voting through the apparatus of EVMs is sanctioned by law vide Section 61-A of the Representation of People Act, 1951, with effect from 15-03-1989. In the General Elections held in the year 2004 and 2009, system of voting through EVMs was put to application. So far as allegations contained in the petition are concerned, those are merely in the nature of apprehension expressed by the petitioner. The actual misuse or intentional tampering or consequential malfunctioning of EVMs is a question to be decided based on appreciation of facts. Unless the petition contains proper pleadings with material particulars in respect of intentional tampering and malfunctioning of EVMs, the vague allegations made by the petitioner in the petition cannot be gone into. It is not open for this Court to draw a conclusion only on the basis of expert opinion or on the basis of surmises or conjectures as regards tampering and malfunctioning of EVMs. There are absolutely no pleadings to the effect that malfunctioning of EVMs is at the instance of Respondent No.1 and further that the result of the election is vitiated on account of such tampering which would amount to "corrupt practice" within the meaning of Section 123 of the Act of 1951. Unless and until it is demonstrated and pleaded that someone had access to the EVMs and that those machines were tampered and such tampering was at the instance of Respondent No. 1 or with a view to gain advantage at the elections to Respondent No.1, the allegations made in the petition, in that behalf, cannot be examined. The petition does not set out "material facts". It is nowhere pleaded in specific terms that :

(a) The returned candidate or his agents have, in any manner, done acts of rigging or manipulations with the EVMs, consequently the result of election is materially affected as far as the returned candidate is concerned.

(b) Due to any fault or interference in the EVMs, the result of election has been materially affected as far as the returned candidate is concerned.

7. So far as the contention raised by the petitioner, in the petition, in respect of alleged irregularity in the manner of voting at Polling Booth No. 90-182-Chainpur is concerned, it is to be noted that the allegations are vague in nature. Nowhere it is stated that rigging or malpractice was by somebody at the instance of Respondent No.1 or with a view to gain advantage at the elections to Respondent No. 1.

8. It is to be noted that at 16-Parliamentary Nanded Constituency, it was multi-candidate election between 22 candidates. The polling particulars at the election are as under :

Total votes polled : 7,74,686

Votes secured by Respondent No. 1 : 3,46,400

Votes secured by petitioner : 2,71,786

Respondent No.1 got elected by a margin of 74,614 votes.

8. At Chainpur Polling Station No. 90-182, total votes polled were 401. The votes secured by Respondent No.1 were 117 and votes secured by petitioner were 206 and other contesting candidates got 78 votes. The election petitioner himself got a lead of 89 votes at Polling Station-Chainpur. Thus the figures, in themselves, are suggestive of the fact that vague allegations contained in the petition in respect of rigging of EVMs while recording votes at Chainpur, are without any basis. What is contended in the petition is that there was a defect in the ballot unit and not in the control unit. Ballot unit is considered to be dummy unit and kept in the polling compartment, whereas, control unit is handled by the Presiding Officer and it has all intelligence inbuilt in it. It is also to be appreciated that the petitioner has not disclosed anything about his personal knowledge about the occurrence of such an incident at Polling Station-Chainpur.

9. Similar is the case in respect of Polling Station No. 265-Hatrala. The ballot particulars are thus :

Total votes polled : 263

Votes cast in favour of petitioner : 81

Votes cast in favour of Respondent No. 1: 167

The allegations in respect of malfunctioning and defect occurred in the machine is distinguishable from corrupting the EVMs. Moreover, the petitioner has not stated anything in respect of his personal knowledge of the incident at village Hartala. Considering the margin of votes by which Respondent No. 1 got elected, the votes cast at Polling Station No. 265 and 90-182 are insignificant. A reference can be made to the observations of the Apex Court in the matter of **Election Commission of India Vs. Shivaji & Others**, reported in (1988) 1 SCC 277. The Apex Court has observed thus :

"... It has to be stated here that it is not the law that every non-compliance with the provisions of the Act or of the Constitution will vitiate an election. It is only when it is shown that the result of the election was materially affected by such non-compliance the High Court would have jurisdiction to set aside an election in accordance with Section 100 (1)(d)(iv) of the Act."

• **SECTION 83(2) OF THE REPRESENTATION OF THE PEOPLE ACT READ WITH SECTION 94-A OF THE CONDUCT OF ELECTIONS RULES. 1961 - FORM NO. 25 :**

10. Section 83 of the Representation of the People Act refers to contents of petition. Sub-section (2) thereof provides that :

(2) Any schedule or annexure to the petition shall also be signed by the petitioner and verified in the same manner as the petition.

In the instant case, the schedule is not verified as per the requirements of law, however, verification of the schedule is in the nature of certifying the schedule as true copy of some document. The verification of the schedule is not as contemplated by law. Each and every individual schedule is required to be verified independently. The source of knowledge stated by the petitioner is "own knowledge" as distinguishable from "information" derived from others vide verification of Election Petition proper as well as the affidavit. The petition does not show the source of knowledge is "personal knowledge" of the petitioner himself. Such defect results in non-disclosure of cause of action. A reference can be made to a judgment of the Apex Court in the matter of **L.R. Shivaramagowda & others Vs. T. M. Chandrashekhara (dead) by L. Rs. & others** reported in (1999) 1 SCC 666, wherein it is observed thus :

"15. The non-disclosure of grounds or sources of information in an election petition which is to be filed within forty-five days from the date of election of the returned candidate will have to be scrutinised from two points of view. The non-disclosure of the grounds will indicate that the election petitioner did not come forward with the sources of information at the first opportunity. The real importance of setting out the sources of information at the time of the presentation of the petition is to give the other side notice of the contemporaneous evidence on which the election petition is based. That will give an opportunity to the other side to test the genuineness and veracity of the sources of information. The other point of view is that the election petitioner will not be able to make any departure from the sources or grounds, if there is any embellishment of the case it will be discovered."

- **ALLEGATIONS OF CORRUPT PRACTICE MUST BE PROPERLY ALLEGED AND BOTH MATERIAL FACTS AND PARTICULARS SHOULD BE PROVIDED IN THE ELECTION PETITION ITSELF SO AS TO DISCLOSE THE COMPLETE CAUSE OF ACTION.**

11. A reference can be made to a judgment in the matter of **Gajanan Krishnaji Bapat Vs. Dattaji Raghobaji Meghe**, reported, in (1995) 5 SCC 347. The Apex Court in paras 16 and 18, has observed thus :

"16. The election law insists that to unseat a returned candidate, the corrupt practice must be specifically alleged and strictly proved to have been committed by the returned candidate himself or by his election agent or by any other person with the consent of the returned candidate or by his election agent. Suspicion, however strong cannot take the place of proof, whether the allegations are sought to be established by direct evidence or by circumstantial

evidence. Since pleadings play an important role in an election petition, the legislature has provided that the allegations of corrupt practice must be properly alleged and both the material facts and particulars provided in the petition itself so as to disclose a complete cause of action.

18. A petition levelling a charge of corrupt practice is required, by law, to be supported by an affidavit and the election petitioner is also obliged to disclose his source of information in respect of the commission of the corrupt practice. This becomes necessary to bind the election petitioner to the charge levelled by him and to prevent any fishing or roving enquiry and to prevent the returned candidate from being taken by a surprise."

12. In the instant matter, affidavit presented along with the petition, in respect of corrupt practice, is not in conformity with prescribed Form No. 25. Thus there is non-compliance of Rule 94-A of the Conduct of Elections Rules, 1961. The defect, being a serious one, cannot be overlooked. Thus, the instant petition lacks all details of material facts, material particulars, proper verification of the petition and proper affidavit, which is required to be filed in prescribed Form. The affidavit required to be presented, as mandated by proviso to Section 81(3), shall be in Form No. 25. The form of the affidavit requires the deponent to state which of the paragraphs of the election petition, in which allegations of corrupt practice are made, are based on his own knowledge and which are based on his information. Section 86(1) mandates that the High Court shall dismiss an election petition which does not comply with the provisions of Section 81 or Section 82 or Section 117 of the Representation of the People Act. The language of this sub-section is quite imperative and commands the High Court, in no uncertain terms, to dismiss the election petition which does not comply with the requirements of Section 81 or Section 82.

- **THE INCIDENCE OCCURRED AT VILLAGE BARBADA, DATED 12TH MARCH, 2009.**

13. On consideration of the allegations contained in the petition in respect of the incidence at Barbada and on perusal of the First Information Report, there is absolutely no role attributed to Respondent No.1. The incidence is prior to presentation of nomination by the petitioner i.e. on 28-03-2009. Moreover, the election petition also does not disclose that the petitioner has any personal knowledge about the occurrence of such an incidence nor he speaks of his presence at the meeting.

14. The allegation in respect of breach of Code of Conduct is prior to the presentation of nomination by Respondent No. 1. This, in itself, does not amount to a corrupt practice. Moreover, pleadings in respect of corrupt practice, so far as it relates to incidence at Barbada, is also

imperfect. It is deficient all material particulars so as to point finger to Respondent No. 1 or to draw an inference in respect of complicity of Respondent No. 1.

15. There is a reference in the election petition in respect of a pamphlet (produced at page 188 of the election petition), which is stated to have been published under the signature of Shri Ashok Chavan, (the then) Chief Minister of Maharashtra. In his capacity as leader of the political party i.e. Indian National Congress, Shri Chavan was free to carry on electioneering campaign and make appeal to the voters for casting votes in favour of the candidates set up by the Indian National Congress party. Shri Chavan during conduct of election campaign, is alleged to have highlighted the general development activities like Railway, Industrialization, Irrigation, which does not, in itself amount to corrupt practice.

THE OBJECTION BASED ON SECTION 86 OF THE REPRESENTATION OF THE PEOPLE ACT AND UNDER ORDER VII RULE 11 OF THE CODE OF CIVIL PROCEDURE READ WITH SECTION 83 OF THE ACT.

16. An election petition shall disclose all material facts on which the petitioner relies to establish existence of cause of action. Material facts essentially refer to all the relevant facts on which the petitioner relies for purposes of drawing inferences in his favour during the course of trial. The absence of material facts and insufficient cause of action would inevitably lead to dismissal of election petition. In the matter of Samant Vs. George Fernandez, reported in AIR 1969 SC 1201 it is observed as below :

“The word ‘material’ shows that the facts necessary to formulate a complete cause of action must be stated. Omission of a single material facts leads to an incomplete cause of action and the statement of claim becomes bad. The function of particulars is to present as full a picture of the cause of action with such further information in detail as to make the opposite party understand the case he will have to meet. There may be some overlapping between material facts and particulars but the two are quite distinct. Thus the material facts will mention that a statement of fact (which must be set out) was made and material facts will mention that a statement of fact (which must be set out) was made and it must be alleged that it refers to the character and conduct of the candidate that it is false or which the returned candidate believes to be false or does not believe to be true and that it is calculated to prejudice the chances of the appellant. In the particulars the name of the person making the statement, with the date, time and place will be mentioned. The material facts thus will show the ground of corrupt practice and the complete cause of action and the particulars will give the necessary information to present a full picture of the cause of action. In stating the material

facts it will not do merely to quote the words of the section because then the efficacy of the words ‘material facts’ will be lost. The fact which constitutes the corrupt practice must be stated and the fact must be correlated to one of the heads of corrupt practice. Just as a plaint without disclosing a proper cause of action cannot be said to be a good plaint, so also an election petition without the material facts relating to a corrupt practice is no election petition at all. A petition which merely cites the sections cannot be said to disclose a cause of action where the allegation is the making of a false statement.

In the case of **Virender Nath Goutam Vs. Satpal Singh and Ors.** [(2007) SCC 617], the Apex Court explained :—

All material facts, therefore, in accordance with the provisions of the Act, have to be set out in the election petition. If the material facts are not stated in a petition, it is liable to be dismissed on that ground as the case would be covered by Clause (a) of sub-section (1) of Section 83 of the Act read with clause (a) of Rule 11 of Order VII of the Code. The expression ‘material facts’ has neither been defined in the Act nor in the Code. According to the dictionary meaning, ‘material’ means ‘fundamental’, ‘vital’, ‘basic’, ‘cardinal’, ‘central’, ‘crucial’, ‘decisive’, ‘essential’, ‘pivotal’, ‘indispensable’, ‘elementary’ or ‘primary’. [Burton’s Legal Thesaurus, (Third edn.); p. 349]. The phrase ‘material facts’, therefore, may be said to be those facts upon which a party relies for his claim or defence. In other words, ‘material facts’ are facts upon which the plaintiffs cause of action or the defendant’s defence depends. What particulars could be said to be ‘material facts’ would depend upon the facts of each case and no rule of universal application can be laid down. It is, however, absolutely essential that all basic and primary facts which must be proved at the trial by the party to establish the existence of a cause of action or defence are material facts and must be stated in the pleading by the party.

In the case of **Hari Shankar Jain Vs. Sonia Gandhi**, reported in AIR 2001 SC 3689, it was held :

“Material facts required to be stated are those facts which can be considered as materials supporting the allegations made. In other words, they must be such facts as would afford a basis for the allegations made in the petition and would constitute the cause of action as understood in the Code of Civil Procedure, 1908. The expression ‘cause of action’ has been compendiously defined to mean every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the Court. Omission of a single material fact leads to an incomplete cause of action

and the statement of claim becomes bad. The function of the party is to present as full a picture of the cause of action with such further information in detail as to make the opposite party understand the case he will have to meet."

17. In the matter of **Ananga Uday Singh Deo Vs. Ranga Nath Mishra & : Others**, reported in (2002) 1 SCC 499, the Apex Court has observed thus :

"23 It will be thus seen that an election petition is based on the rights, which are purely the creature of a statute, and if the statute renders any particular requirement mandatory, the court cannot exercise dispensing powers to waive non-compliance. For the purpose of considering a preliminary objection as to the maintainability of the election petition the averments in the petition should be assumed to be true and the Court has to find out whether these averments disclose a cause of action or a triable issue as such. Sections 81, 83(1) (c) and 86 read with Rule 94-A of the Rules and Form 25 are to be read conjointly as an integral scheme. When so read if the court finds non-compliance it has to uphold the preliminary objection and has no option except to dismiss the petition. There is difference between 'material facts' and 'material particulars'. While the failure to plead material facts is fatal to the election petition the absence of material particulars can be cured at a later stage by an appropriate amendment. "Material Facts" mean the entire bundle of facts, which would constitute a complete cause of action and these must be concisely stated in the election petition, i.e. Clause (a) of sub-section 10 of Section 83. Then under clause (b) of sub-section (1) of Section 83 the election petition must contain full particulars of any corrupt practice. These particulars are obviously different from material facts on which the petition is founded. A petition leveling a charge of corrupt practice is required by law to be supported by an affidavit and the election petitioner is obliged to disclose his source of information in respect of the commission of corrupt practice. He must state which of the allegations are true to his knowledge and which to his belief on information received and believed by him to be true. It is not the form of the affidavit but its substance that matters. To plead corrupt practice as contemplated by law it has to be specifically alleged that the corrupt practice were committed with the consent of the candidate and that a particular electoral right of a person was affected. It cannot be left to time, chance or conjecture for the court to draw inference by adopting an involved process of reasoning. Where the alleged corrupt practice is open to two equal possible inferences the pleadings of corrupt practice must fail. Whether several paragraphs of the election

petition alleging corrupt practices remain unaffirmed under the verification clause as well as the affidavit, the unsworn allegation could have no legal existence and the court could not take cognizance thereof. Charge of corrupt practice being quasi-criminal in nature the court must always insist on strict compliance with the provisions of law. In such a case it is equally essential that the particulars of the charge of allegations are clearly and precisely stated in the petition. It is the violation of the provisions of Section 81 of the Act which can attract the application of the doctrine of substantial compliance. The defect of the type proved in Section 83 of the Act on the other hand can be dealt with under the doctrine of curability, on the principles contained in the Code of Civil Procedure. Non-compliance with the provisions of Section 83 may lead to dismissal of the petition if the matter falls within the scope of Order 6 Rule 16 and Order 7 Rule 11 of the Code of Civil Procedure. Where neither the verification in the petition nor the affidavit gives any indication of the sources of information of the petitioner as to the facts stated in the petition which are not to his knowledge and the petitioner persists that the verification is correct and the affidavit in the form prescribed does not suffer from any defect, the allegations of corrupt practices cannot be enquired and tried at all. In such a case the petition has to be rejected on the threshold for non-compliance with the mandatory provisions of law as to pleadings. It is no part of the duty of the Court suo motu even to direct furnishing of better particulars when objection is raised by the other side. Whether the petition does not disclose by cause of action it has to be rejected. The court, however, cannot dissect the pleadings into several parts and consider whether each one of them discloses a cause of action. The petition has to be considered as a whole. There cannot be a partial rejection of the petition."

18. The petition, which does not disclose the material facts or the accrual of cause of action shall have to be dismissed at the threshold, as has been laid down in the case of **Anil Vasudev Salgaonkar Vs. Naresh Kushall Shigaonkar**, reported in 2009 (9) SCC 310, if the petition does not contain the pleadings as regards :

- (a) Material particulars of corrupt practice;
- (b) Details as to plea that due to corrupt practice on the part of the returned candidate or his agents, the result of the election was materially affected as regards the returned candidate;
- (c) Detailed pleading based on facts as to how the corrupt practice by returned candidate or anyone on his behalf has materially affected the result of the election, as it concerns the returned candidate. shall be dismissed at threshold.

19. The position is well settled that an election petition can be summarily dismissed if it does not furnish cause of action, in exercise of powers under the Code of Civil Procedure. Appropriate orders can be passed if mandatory requirement of Section 83 of the Act, in respect of incorporation of material facts in the election petition are not complied with. Omission to state a single material fact also may lead to an incomplete cause of action and that an election petition, without detailing material facts relating to corrupt practice, is not an election petition at all. All the primary facts, which must be proved by a party to establish cause of action or his defence are material facts. In the context of charge of corrupt practice, it would mean that the basic facts which constitute ingredients of material facts must be specified in order to succeed on the charge. All the facts, which are essential to clothe with complete cause of action must be pleaded and omission of even a single material fact would amount to disobedience of the mandate of Section 83(1)(a) of the Act.

20. In the instant case, considering the vague allegations set out in the petition, inevitable inference is required to be drawn that the petition does not set out material facts and, therefore, must be dismissed at the threshold. The instant petition, which does not set out the requirements noted above, at sub paras (a) to (c), referred to in the matter of Anil Vasudeo Salgaonkar's case (supra), is liable to be dismissed. The verification of the pleadings is also not in consonance with the mandatory procedure prescribed under Rule 94-A of the Conduct of

Elections Rules, 1961. The petition as well as schedules annexed to the petition are not in Form No. 25, as contemplated by Rule 94-A of the Rules, 1961. The affidavit in respect of corrupt practice and in respect of particulars thereof is also not in the prescribed form and as such, there is non-compliance of procedure prescribed under Section 83(1) of the Act and the proviso thereto.

21. On consideration of the defects stated above in respect of deficiencies in the pleadings, non disclosure of material facts, non disclosure of material particulars, vagueness in respect of allegations of corrupt practice failure to comply with the mandatory requirements in respect of verification of the petition, affidavit in support of allegations of corrupt practice as well as the schedules, as required by law and Rules, it has to be concluded that the petition is liable to be dismissed on account of non observance of the mandatory requirements of the provisions of the Representation of the People Act, as stated above.

22. Hence, the following order :

For the reasons stated above, the election petition is liable to be dismissed and same is accordingly dismissed. The petitioner to bear his own costs and to pay costs of Respondent No. 1.

R. M. BORDE, J.

[ No. 82/MT-HP/1/2009 (Aurangabad)]

By Order,

BERNARD JOHN, Secy.

### आदेश

नई दिल्ली, 10 सितम्बर, 2012

आ.अ. 34.—यतः भारत निर्वाचन आयोग का यह समाधान हो गया है कि नीचे की सारणी के स्तंभ (4) में विनिर्दिष्ट असम राज्य में विधान सभा हेतु साधारण निर्वाचन, 2011 में नीचे की सारणी के स्तंभ 3 में विनिर्दिष्ट निर्वाचन क्षेत्र से निर्वाचन लड़ने वाला प्रत्येक अभ्यर्थी, लोक प्रतिनिधित्व अधिनियम, 1951 तथा तद्दीन बनाए गए नियमों द्वारा अपेक्षित उक्त सारणी के स्तम्भ 5 में यथादर्शित अपने निर्वाचन व्ययों का लेखा दाखिल करने में असफल रहा है;

और यतः, उक्त अभ्यर्थी ने निर्वाचन आयोग द्वारा सम्यक नोटिस दिए जाने के बावजूद उक्त असफलता के लिए कोई कारण या स्पष्टीकरण नहीं दिया है या उनके द्वारा दिए गए अभ्यावेदन, यदि कोई हों, पर विचार करने के पश्चात् भारत निर्वाचन आयोग का यह समाधान हो गया है कि उक्त असफलता के लिए उनके पास कोई उपयुक्त या न्यायोचित कारण नहीं है;

अतः, अब निर्वाचन आयोग उक्त अधिनियम की धारा 10क के अनुसरण में नीचे की सारणी के स्तंभ 4 में विनिर्दिष्ट व्यक्तियों को संसद के किसी सदन या किसी राज्य/संघ राज्य क्षेत्र की विधान सभा अथवा विधान परिषद् के लिए सदस्य चुने जाने और होने के लिए इस आदेश की तारीख से तीन वर्षों की अवधि के लिए निरर्हित घोषित करता है :-

### सारणी

क्रम सं.	निर्वाचन के व्यौरे	विधान सभा निर्वाचन क्षेत्र की संख्या व नाम	निर्वाचन लड़ने वाले अभ्यर्थी का नाम व पता	निरर्हिता का कारण
(1)	(2)	(3)	(4)	(5)
1.	असम राज्य से विधान सभा साधारण निर्वाचन, 2011	2-पाथरकंडी विधान सभा निर्वाचन क्षेत्र	1.श्री निखिल कुमार सेन, गाँव सिंगरी, पोस्ट ऑफिस पाथरकंडी (ब्लॉक), पुलिस थाना : पाथरकंडी, जिला-करीमगंज	निर्वाचन के व्ययों का लेखा प्रस्तुत करने में असफल रहे।



(1)	(2)	(3)	(4)	(5)
	असम राज्य से विधान सभा साधारण निर्वाचन, 2011		2. श्री मइनुद्दीन चौधरी, गाँव हटखोला, डाकघर कनाईबाजार, पुलिस थाना पाथरकंडी, जिला करीमगंज असम	निर्वाचन के व्ययों का लेखा प्रस्तुत करने में असफल रहे।
2.	-वही-	61-धर्मपुर विधान सभा निर्वाचन क्षेत्र	श्री सैयद मिजानुर रहमान पुत्र-मकीब, गाँव अमानी डाकघर-अमानी, पुलिस थाना बेलसोर, जिला नालबाडी असम पिन-781306	-वही-

[सं. 76/असम-वि. स./2011]

आदेश से,

अनुज जयपुरियार, सचिव

**ORDER**

New Delhi, the 10th September, 2012

**O. N. 34.**—Whereas, the Election Commission of India is satisfied that each of the contesting candidate specified in column 4 of the Table below at the General Election to the Legislative Assembly, 2011 in the Assam State held from the constituency specified in column 3 against his/her name has failed to lodge the account of his/her election expenses as shown in column 5 of the said Table as required by the Representation of the People Act, 1951 and the Rules made thereunder;

And whereas, the said candidates have either not furnished any reason or explanation for the said failure even after due notice by the Election Commission or after considering the representation made by them, if any, the Election commission is satisfied that they have no good reason or justification for the said failure;

Now, therefore, in pursuance of Section 10A of the said Act, the Election Commission hereby declares the persons specified in column 4 of the Table below to be disqualified for being chosen as and for being a member of either House of the Parliament or the Legislative Assembly or Legislative Council of a State or Union Territory for a period of three years from the date of this order :—

**TABLE**

Sl. No.	Particulars of Election	No. and Name of Assembly Constituency	Name and address of contesting candidate	Reason for Disqualification
(1)	(2)	(3)	(4)	(5)
1.	General Election to Legislative Assembly, 2011 from the state of Assam.	2-Patharkandi LAC	1. Shri Nikhil Kumar Sen, Vill., Singari, P.O. Patharkandi (Block), P.S. Pathar Kandi Distt. Karimganj 2. Shri Main Uddin Choudhury, Vill. Hatkhola P.O. Kanaibazar, P.S. Pathar kandi, Distt. Karimganj, Assam.	Failed to lodge accounts of election expenses at all.  -do-
2.	-do-	61-Dharmapur LAC	Shri Syed Mizanur Rahman, S/o. Makib Vill-Amani P.S. Belsor, Dist. - Nalbari, Assam, Pin-781306	-do-

[No. 76/AS-LA/2011]

By Order,  
ANUJ JAIPURIAR, Secy.